

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAMIEN PHILLIPS, :
Plaintiff :
vs. : CIVIL NO. 4:CV-09-0771
Defendants :
RONALD LONG, M. D., et al., :

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the Report and Recommendation of the magistrate judge recommending we grant defendant Donna Beaven's motion to dismiss and deny plaintiff Damien Phillips' motion for summary judgment. Plaintiff objects to the report, arguing that he sufficiently pleaded an 8th Amendment claim against defendant and that he presented sufficient evidence warranting summary judgment. Since objections were filed, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c).

We are not convinced by the plaintiff's arguments. The magistrate judge correctly applied the relevant case law concerning the sufficiency of pleadings and summary judgment. We agree with the conclusions of Magistrate Judge Smyser, and see no reason for further comment since our reasoning mirrors that of the magistrate judge.

ACCORDINGLY, this 15th day of March, 2011, it is ordered that upon consideration of the report and recommendation of the magistrate judge (doc. 86), filed November 11, 2010, to which objections were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. Plaintiff's objections (doc. 94) is overruled.
3. Defendant Beaven's motion to dismiss (doc. 59) is granted, and she is dismissed from the action.
4. Plaintiff's motion for summary judgment (doc. 64) is denied.
5. This matter is remanded to Magistrate Judge Smyser for further proceedings.

/s/William W. Caldwell
William W. Caldwell
United States District Judge